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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,255	01/09/2001	Richard N. Spann	RNS-001	6555

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 02/10/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/757,255

Applicant(s)

SPANN, RICHARD N.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2002 and 07 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 31-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-30 and 39-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Art Unit: 3634

### **DETAILED ACTION**

This Office action is in response to the communications file November 13, 2002 (Paper No. 10) and January 7, 2003 (Paper No. 13).

#### ***Request for Continued Examination***

The request filed on November 13, 2002 (Paper No. 10) for a Request for Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 09/757,255 is acceptable and a RCE has been established. An action on the RCE follows.

#### ***Election/Restriction***

In response to the communication filed January 7, 2003 (Paper No. 13), in which Applicant clarified that claims 24-30 and 39-42 read on the elected species (see Paper No. 5) of Figures 1, 2, and 3A, claims 1-23 and 31-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5. It is noted that currently there are no generic claims.

#### ***Title***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Art Unit: 3634

*Abstract*

Applicant is reminded of the proper language and format for an abstract of the disclosure. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," "is provided", as in line 2, etc.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30 and 39-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language of claims 26 and 27 is awkward thereby rendering the claims indefinite since it is unclear whether the claim is setting forth that "each" of the opposed edges has at least one depression. Clarification is requested. This rejection is also applicable to claim 42. *Further*, claim 42 is rendered indefinite since the depressions in "each" of the rails has not been properly set forth.

Claim 30 is rendered indefinite since the claim fails to further limit the structure of the device.

Claims 39-42 purportedly recite method steps, e.g., "thereby forming" in claim 39, "at least one depression formed along" in claim 42, etc. It is strongly suggested that the steps recited

Art Unit: 3634

in the claims be re-written to positively recite the intended method steps, e.g., --forming at least one depression along--, etc.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-27, 29, 30, and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Pushee '631.

Pushee '631 discloses a device for elongated members (17) whereby the holder comprises first (15) and second (11) generally parallel (in the vertical direction) rails defining crossbars that are vertically (left to right in Figure 2) and horizontally offset (top to bottom in Figure 2) from one another thereby forming an opening (see Figure 2) whereby the elongated members (17) are received and supported in a *generally* vertical orientation; the rails (11 and 15) have *generally* opposed edges, i.e., top edges of each rail, for contacting the member (17) when inserted therein; rail (15) comprises at least two depressions (15a and 15b) formed *along* the opposed edge; and the holder further comprises two end plates (4) attached to side edges (see Figure 1) of the crossbars whereby a footprint is formed between the end plates and the center of gravity of the elongated member (17) lies within the footprint (see Figure 2). It is noted that the lower portion (generally at 16 in Figure 2) of the elongated members is not supported in any way by the device. Pushee '631 is considered to disclose the structure capable of performing the method

Art Unit: 3634

steps of providing rails vertically and horizontally offset from one another, forming at least two depressions on the edge of a rail and inserting an elongated member between the rails so that the member is held by the depression a generally vertical orientation.

### ***Allowable Subject Matter***

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to show or suggest a device, as called for in the claims, whereby each of the rails comprises depressions that are aligned, as specifically called for in the claimed combination of claim 28. It is noted that while the prior art, namely Speiser and Rodman, show devices having offset rails each having grooves, the devices comprise means to support the lower end of the elongated members placed therein.

### ***Conclusion***

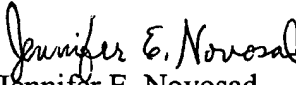
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mathieu, Keis *et al.*, Speiser, and Burtch, Orrill, and Rodman show various devices for holding elongated members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

Art Unit: 3634

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

  
Jennifer E. Novosad  
Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
February 5, 2003